

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON

M. EDWARD CUNNINGHAM, II,
Individually and as Next Friend and Father
of R.E.C., a minor,

Plaintiff,

v.

Civil Action No. 3:17-cv-02521

THE UNITED STATES OF AMERICA,

Defendant.

AGREED DISMISSAL ORDER

Pursuant to Rule 41 of the Federal Rules of Civil Procedure, the parties have stipulated, by and through their counsel, that: (1) Plaintiff filed this civil action against the United States of America (United States) pursuant to the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671-2680, and 42 U.S.C. § 233; (2) Plaintiff has not exhausted his administrative remedies as required under 28 U.S.C. § 2675 under the FTCA because he filed this civil action less than six months after presenting an administrative tort claim to the United States Department of Health and Human Services and that administrative tort claim has not yet been denied by that agency; and (3) the parties have agreed to the dismissal of this civil action without prejudice, with each party to pay their own respective costs and attorney's fees.

After reviewing the aforesaid stipulation which has been filed with the Court, it is hereby
ORDERED:

1. That the aforesaid stipulation is APPROVED;

2. That this civil action is DISMISSED WITHOUT PREJUDICE, with each party to pay their own respective costs and attorney's fees.

The Clerk is ORDERED to retire this civil action from the docket of the Court.

The Clerk is further ORDERED to send a certified copy of this ORDER to all counsel of record.

ENTERED: This 18th day of May, 2017.



ROBERT C. CHAMBERS, CHIEF JUDGE

APPROVED FOR ENTRY:

**M. EDWARD CUNNINGHAM, II,
Individually and as Next Friend and Father
of R.E.C., a minor,
Plaintiff,**

s/Bert Ketchum

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UNITED STATES OF AMERICA
Defendant,

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